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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Damian Y. Kolodiy, Plaintiff, v. Evgeny Afineevsky, Defendant.	Case No.: __________ **COMPLAINT AND JURY DEMAND**

Plaintiff Damian Y. Kolodiy ("Kolodiy" or "Plaintiff") alleges as follows:

THE PARTIES AND INTRODUCTION

1. Kolodiy is a documentary filmmaker and resident of New York, New York. His works include The Orange Chronicles, a web series "NYC ROCKS TV," ill Generation, and, more recently, *Freedom or Death!* ("Freedom or Death") which documents the 2014 Ukrainian Revolution. Kolodiy is the owner of all right, title, and interest (including copyright) in the aforementioned films.

2. Upon information and belief, Defendant Evgeny Afineevsky is the self-identified producer and director of the documentary film *Winter on Fire: Ukraine's Fight for Freedom* ("*Winter on Fire*"). He resides in Los Angeles, California.

3. This is an action for copyright infringement, false advertising, and unfair competition grounded in Afineevsky's unauthorized use of Kolodiy's copyrighted footage in *Winter on Fire* and Afineevsky's false and misleading promotion of his film.

BACKGROUND FACTS APPLICABLE TO ALL COUNTS

RELEVANT UKRAINIAN HISTORY

4. The Ukrainian Soviet Socialist Republic ("Soviet Ukraine" or "Ukrainian SSR") was a Soviet socialist state and one of the constituent republics of the Soviet Union from its inception in 1922 to its breakup in 1991.

5. On July 16, 1990, the Soviet Ukrainian Parliament adopted the Declaration of State Sovereignty of Ukraine, which declared the primacy of the Soviet Ukraine's laws over those of the Soviet Union, and declared that Soviet Ukraine would maintain its own army. On December 1, 1991, Ukraine formally declared its independence (by referendum vote on the Aug. 24, 1991 Act of Declaration of Independence of Ukraine). On December 8, 1991, the presidents of Russia, Ukraine and Belarus signed the Belavezha Accords, which declared the Soviet Union dissolved, and on December 25, 1991, then-Soviet Union president, Mikael Gorbachev resigned. The following day, the Supreme Soviet, the highest governmental body of the Soviet Union, voted both itself and the Soviet Union out of existence.

6. The Crimean Peninsula (Crimea) is a large land area and former Ukrainian territory. For 200 years, until 1954, Crimea had been part of Russia. In 1954, Crimea was gifted to Soviet Ukraine by then Russian Premier Nikita Khrushchev. Following the dissolution of the

Soviet Union, the Autonomous Republic of Crimea was formed as a constituent entity of independent Ukraine.

7. In the years following the dissolution of the Soviet Union, Ukraine's economy struggled. GDP fell significantly throughout the 1990s and inflation was rampant. In the early 2000s, however, Ukraine began to see real GDP growth.

8. In 2004, Viktor Yanukovych ("Yanukovych") initially won the Ukrainian presidential election. However, protests erupted over what was claimed to be massive corruption, voter fraud, and voter intimidation. These protests have been referred to as the "Orange Revolution." The protests ultimately succeeded when the results of the original run-off were annulled and a revote was ordered by Ukraine's Supreme Court. The final results of the revote resulted in a victory for Viktor Yushchenko ("Yushchenko") over Yanukovych.

9. Over the following years, the Ukrainian economy again faced turmoil. Several disputes with Russia led to gas shortages. And, during the 2008-2009 global financial crisis, Ukraine's GDP plunged.

10. In 2010, Ukraine held another election in which Yanukovych was elected president. In the years following his election, Ukraine still suffered from economic hardship and by the end of 2013 was in need of outside economic support.

11. In November 2013, Yanukovych rejected a pending European Union trade agreement, choosing instead to pursue a Russian loan bailout and closer ties with Russia. This decision led to a series of political demonstrations in Kiev, Ukraine, protesting Yanukovych and his administration. The protest events during the period following Yanukovych's rejection of the

EU trade agreement have been referred to as the "Revolution of Dignity" inside of Ukraine, but more commonly called the "Ukrainian Revolution," "Maidan," or "Euromaidan" outside of Ukraine. The events were widely-reported by international media.

12. The protests were centered on Independence Square in Kiev. While the protests were mostly peaceful, they ended in deadly conflict between the protestors and police.

13. On February 18–21, 2014, armed conflict broke out between the protestors and police. The conflict reached its peak on February 20, 2014, when, upon information and belief, approximately 50 people were shot dead and hundreds injured. This event would later become known as the "Maidan massacre." As shots were being fired, the protestors used Hotel Ukraine, close to Independence Square, as a makeshift field hospital to treat their wounded.

14. On February 21, 2014, Yanukovych claimed that he had reached an agreement with the opposition. However, it was reported that late that day that he fled Kiev for Kharkiv (another city in Ukraine), then to Crimea, and eventually to exile in southern Russia.

15. On February 22, 2014, the Ukrainian parliament voted to remove Yanukovych from his post, on the grounds that he was unable to fulfill his duties. It has since been reported that Yanukovych may have been granted Russian citizenship.

16. On February 23, 2014, pro-Russian demonstrations were held in the Crimean city of Sevastopol. Several days later, masked troops, widely-reported to be Russian troops, took over the Supreme Council of Crimea, captured strategic sites across Crimea, and eventually caused the installation of a pro-Russian government in Crimea and a declaration by Crimea of its independence from Ukraine ("the annexation").

17. On March 16, 2014, in a Crimean referendum, a majority of voters favored separation from Ukraine. The United Nations General Assembly has rejected the vote and annexation, and adopted a non-binding resolution affirming the "territorial integrity of Ukraine within its internationally recognized borders."

18. In July 2015, Russian Prime Minister Dmitry Medvedev announced that Crimea had been fully integrated into Russia.

KOLODIY'S CREATIVE WORKS

19. Kolodiy is a documentary filmmaker who has focused a large part of his career on documenting Ukrainian political events, such as those discussed above. His reputation and career in the U.S. depend in part on being recognized as a leading documentary filmmaker concerning Ukrainian political events.

20. For instance, Kolodiy crisscrossed Ukraine during the Orange Revolution as a volunteer International Election Observer, recording the build-up to what turned out to be one of the most astonishing bloodless political turnarounds in recent history. He filmed footage of these events, and produced a film entitled "The Orange Chronicles." The Orange Chronicles captures the protests in the streets of Kiev, and chronicles Kolodiy's travels throughout Ukraine as he interviews all types of citizens about the political turmoil and events of the time. Kolodiy also joined and documented a caravan, dubbed the "Friendship Train," traveling throughout censored Ukraine regions delivering news of the Orange Revolution in hostile territory. Along the way he documents the interactions between opposition (pro-Yushchenko) and government (pro-Yanukovych) supporters, culminating with a free and fair presidential election. The Orange

Chronicles has won several awards in the U.S., including at the Garden State Film Festival and the Boston International Film Festival.

21. Kolodiy was also in and about Independence Square and Hotel Ukraine in Kiev during the Maidan massacre. Amidst the gunfire, Kolodiy captured video footage of a priest blessing the bodies of deceased protestors, and of the bodies being carried out of the hotel (the "Hotel Ukraine Footage") amidst the protesters and mourners.

22. During the Maidan massacre and the events leading thereto, Kolodiy captured approximately 100 hours of footage, which he intended to form the basis of a film documenting the protestors' struggles against the Ukrainian government. The footage included scenes of peaceful protestors praying, shots of the gunfire at the peak of the Maidan massacre, as well as the Hotel Ukraine Footage (discussed above and below). During the Ukrainian Revolution, Kolodiy was present in Ukraine for a total of 38 of the 93 days as follows: from December 14, 2013 through January 9, 2014, and returning to Maidan on February 12, 2014 through the end of the 93 days on February 22, 2014.

23. After returning to the United States, Kolodiy ultimately incorporated portions of his footage, including the Hotel Ukraine Footage, into his film, *Freedom or Death!*, which first published on September 15, 2015. Kolodiy is the producer, chief cinematographer, director and narrator of *Freedom or Death!*. *Freedom or Death!* documents the Ukrainian Revolution, including the Maidan massacre as seen through Kolodiy's own eyes.

24. The Hotel Ukraine Footage appears in *Freedom or Death!*. It is the most important and climactic scene in the film.

25. With permission from Kolodiy, the Hotel Ukraine Footage also appeared in news coverage of the Maidan massacre.

26. In late March 2014, before departing Ukraine for the United States, Kolodiy left a copy of his important footage regarding the Ukrainian Revolution, including the Hotel Ukraine Footage, with Bohdana Babych, a resident of Kiev, Ukraine, for safekeeping during Kolodiy's travels.

27. Upon information and belief, Ms. Babych was involved in an organization called Spilno.TV, which streamed footage of the protests in Kiev over the Internet without charge.

28. Kolodiy informed Ms. Babych that the film was to be kept as a backup copy and not distributed to others. At no time did Kolodiy grant Ms. Babych, Spilno.TV, or any other individual associated with Spilno.TV a license to copy, distribute, publicly perform, or prepare a derivative work based on his footage.

29. Upon information and belief, Spilno.TV subsequently split into two separate groups, one led by Ms. Babych and one led by Galyna Sadomtseva-Nabaranchuk, the latter of whom took, without permission from Ms. Babych or Kolodiy, possession of all of the hard drives in the Spilno.TV office, including the hard drive on which Kolodiy's footage was stored.

DEFENDANT AFINEEVSKY'S INFRINGING WORK

30. Upon information and belief, Afineevsky traveled to Ukraine in or about April, 2014, after the protests associated with the Ukrainian Revolution had ended, and obtained

a substantial quantity of footage, including the Hotel Ukraine Footage, from Spilno.TV or its successor. Afineesvky and others incorporated some of that footage into a film entitled *Pray for Ukraine*. Upon information and belief, Afineevsky was not present in Ukraine between November 2013 and the end of February 2014, including for the Maidan massacre.

31. Upon information and belief, Afineevsky returned to the United States and adapted *Pray for Ukraine* and/or the other footage obtained from Spilno.TV or its successor into *Winter on Fire*. Afineevsky is credited as the producer and director of *Winter on Fire*. *Winter on Fire* is listed as an Afineevsky-Tolmar Production. Upon information and belief, the production was at least partially financed by Netflix, Inc. ("Netflix").

32. Galyna Sadomtseva-Nabaranchuk is credited as a co-producer and line producer of *Winter on Fire*.

33. Like Kolodiy's documentary, *Freedom or Death!*, *Winter on Fire* documents the events of the Ukrainian Revolution. The Hotel Ukraine Footage appears in *Winter on Fire*. Kolodiy is credited as a cinematographer in *Winter on Fire*. The Hotel Ukraine Footage is the most important and climatic scene in *Winter on Fire*.

34. *Winter on Fire* also includes two shorter scenes filmed by Kolodiy during his time in Ukraine. In one scene, protesters are seen praying peacefully amid lines of riot-geared police. In another scene, a grenade explodes at night during the confrontation. These scenes and the Hotel Ukraine Footage will be referred to collectively as the "Misappropriated Footage."

35. At no time did Kolodiy grant Afineevsky, or any other individual or entity associated with Afineevsky, *Winter on Fire*, or *Pray for Ukraine*, a license to copy, distribute, publicly perform, or prepare a derivative work based on the Misappropriated Footage or any other footage captured by Kolodiy in Ukraine, including specifically to incorporate the Misappropriated Footage into *Winter on Fire*.

36. Eduard Georgadze, who is credited as a co-producer of *Winter on Fire*, requested permission from Kolodiy to use other footage filmed by Kolodiy as part of the film. Kolodiy denied permission. Upon information and belief, Georgadze was acting on behalf of Afineevsky when he made this request.

DEFENDANT'S UNAUTHORIZED COPYING, DISTRIBUTION, AND PERFORMANCE OF THE COPYRIGHTED WORK

37. *Winter on Fire*, including the Misappropriated Footage, was screened at the IFC Center in New York on September 29, 2015, as part of the Stranger Than Fiction Documentary Series. Afineevsky personally attended this screening and answered questions from the audience afterward. Kolodiy also attended this screening, where he informed Afineevsky that the Misappropriated Footage was created by Kolodiy and was being used without permission. Upon information and belief, Afineevsky caused, directed, and/or authorized this screening.

38. Upon information and belief, *Winter on Fire* screened continually at the IFC Center from October 9, 2015 through October 15, 2015, as part of a limited theatrical release in New York and Los Angeles; Afineevsky attended the first day of screening in New York and again answered audience questions about the film.

39. Upon information and belief, Afineevsky again caused, directed, and/or authorized *Winter on Fire*, including the Misappropriated Footage, to be screened in New York on or about November 12, 2015, at the DOC NYC documentary film festival. Again, Afineevsky personally attended the screening.

40. Upon information and belief, Afineevsky contracted with Netflix to distribute *Winter on Fire* and/or sold some or all of his rights in *Winter on Fire* to Netflix. *Winter on Fire* was released nationwide as part of Netflix's streaming video service on October 9, 2015. *Winter on Fire* was branded by Netflix as a Netflix Original.

DEFENDANTS' FALSE AND MISLEADING PROMOTION OF THE INFRINGING WORK

41. Upon information and belief, Afineevsky promoted *Winter on Fire*, including in New York, for example by attending the aforementioned screenings and by giving interviews to New York-based media, for example the Brian Lehrer Show on WNYC and The Daily Show with Trevor Noah on Comedy Central, which was filmed in New York.

42. Upon information and belief, Afineevsky has repeatedly represented to the public and to prospective business partners that he was personally present during the protests in Kiev, including the deadly shootings that took place in February 2014, and even sustained injuries there.

43. In an interview in New York on The Daily Show with Trevor Noah on Comedy Central on October 7, 2015, Afineevsky stated to the public that after a tip from a friend in Ukraine, he took his camera and flew to the Ukraine right before the Ukrainian Revolution

began; that he was present during the entire process; that he witnessed a unity between all social strata during the revolution; that no one stopped him when he filmed during the revolution; and that other people offered their camera footage to him while in Ukraine.

44. In an interview on The Brian Lehrer Show on WNYC on February 22, 2016 (which was filmed in New York), Afineevsky stated to the public that he observed certain individuals portrayed in *Winter on Fire* while in Ukraine during the 93 day period. According to Afineevsky, snipers shot at him and "blood was spilled on right and left" of him. Afineevsky stated that he "saw the priest on the frontlines when the bullet went through his hat." When asked if he was there and filming in the middle of the revolution, Afineevsky stated "I was there, I was filming . . . I was there. I was there, and I was talking to the people who were professionals and non-professionals." Afineevsky stated that he was sometimes not able to angle the camera because he was "under the bullets."

45. In an interview with deadline.com published on January 14, 2016, Afineevsky stated to the public that he had traveled to Ukraine in the early stages of the protests and hired 28 amateur and professional cinematographers to document the protests. According to Afineevsky, he was "too busy documenting to worry about the bullets flying over [his] head or the batons coming down."

46. In an interview with Radio Free Europe published on January 15, 2016, Afineevsky stated to the public that he flew to Kiev in November 2013, remained there through February 2014, and captured the Maidan revolution on camera.

47. In an interview with mashable.com published on January 21, 2016, Afineevsky stated to the public that, on November 30 during a riot in Kiev, he was close enough to the demonstrators to "[see] the blood coming from their faces."

48. In an interview with undertheradarmag.com published on February 26, 2016, Afineevsky stated to the public that he recorded "every day and night" to capture all of the messages he saw while in Kiev during the Maidan revolution; that he "was there on the front lines, exposed to the death, with people falling next to [him] dying"; that he had bruises and scars that arose from being in Kiev during the Maidan revolution; that he faced dangerous moments in Kiev while filming the revolution; that he developed PTSD during his time in Kiev while filming the revolution; and that he met and closely interacted with Roma, a key portrayal in the film, during the 93 day revolution.

49. Upon information and belief, the aforementioned statements in paragraphs 42-48 were false and misleading. Afineevsky did not travel to Kiev during the protests; did not personally participate in the filming of any footage of said protests appearing in *Winter on Fire*; did not expose himself to any dangers there; did not sustain any injuries or trauma there; and did not interact with Roma or any other figures in the film during the revolution. Instead, Afineevsky remained in the United States during the revolution, traveled to Ukraine thereafter, and used others' footage, including the Misappropriated Footage, when he compiled *Winter on Fire*.

50. Upon information and belief, throughout this time and continuing through the present date, viewers of documentary films, critics and supporters of the revolution, and educators have relied on Afineevsky's false and misleading claims of being physically present

during the revolution and exposing himself to danger when choosing to view *Winter on Fire* over its competitors, including *Freedom or Death!*.

PLAINTIFFS' DAMAGES

51. Upon information and belief, Afineevsky has received income and profited from his infringement of Kolodiy's work and false promotion of *Winter on Fire*, for example by receiving payment from Netflix.

52. On January 14, 2016, it was announced that the Academy of Motion Picture Arts and Sciences had nominated *Winter on Fire* for the Academy Award for Best Documentary Feature. *Winter on Fire* did not receive the award, but, on information and belief, *Winter on Fire* received significant publicity and interest from the nomination.

53. Plaintiff's copyrighted work, *Freedom or Death!*, was well received among those who saw it. For example, *Freedom or Death!* won the Audience Award for World Cinema at the 2016 Phoenix Film Festival.

54. Plaintiff's efforts to publicize and generate income from *Freedom or Death!* have been severely impaired by its similarity to the infringing *Winter on Fire,* and by Afineevsky's false and misleading promotion of the film.

55. In September 2016, DOC NYC rejected *Freedom or Death!* because it was insufficiently different from other films about the Ukrainian revolution and the Maidan Massacre. The previous year, DOC NYC had screened *Winter on Fire*.

56. *Freedom or Death!* was also rejected from the SOMA Film Festival in 2016 because of its similarity to *Winter on Fire*.

57. *Freedom or Death!* has been also rejected from university events due to its similarity to *Winter on Fire*. For example, classes and/or organizations at Stony Brook University and McGill University have declined to screen *Freedom or Death!* in favor of *Winter on Fire*.

58. Upon information and belief, the success of *Winter on Fire* and its damage to the market for *Freedom or Death!*, as well as Afineevsky's contract with Netflix, resulted at least partially from Afineevsky's infringing use of the Misappropriated Footage and his false and misleading claim to have personally witnessed and filmed the events in Ukraine.

59. Critic Godfrey Cheshire (for RogerEbert.com) wrote that "Afineevsky led a large crew … that observed the revolt against Ukrainian president Viktor Yanukovych centered on Kiev's Maidan Square for 93 wintry days in late 2013 and early 2014. That footage, some of it quite amazing, might be called the film's first stage."

60. Critic A.O. Scott (for the New York Times) wrote, "The cameras are at the side of the demonstrators and in the path of phalanxes of riot police. Modern technology may not yet be able to capture the smell of gunpowder and tear gas, but Afineevsky takes the viewer closer to the action than might have seemed possible."

61. Critic Michael O'Sullivan (for the Washington Post) wrote, "People get beaten and shot on camera – and occasionally die – in this mesmerizing portrait of protest and crackdown, seen not through the lens of politics, but through the prism of the personal. 'Winter

on Fire' has all the immediacy and power of drama. If it lacks the dispassionate context of more balanced journalism, it makes up for it with a complex, contradictory emotional impact that is simultaneously demoralizing and hopeful."

62. Critic Alan Scherstuhl (for the Village Voice) wrote, "Afineevsky and his crew nose their cameras alarmingly close to the action …. Afineevsky takes us into makeshift hospitals, shows us protestors shouting 'Come to the side of your nation!' at the soldiers in riot gear, and offers several hard-to-shake images …."

63. As a result of the foregoing, Plaintiffs have suffered damages in the form of lost revenues from the exploitation of *Freedom or Death!*. Plaintiff has also suffered irreparable reputational harm as a result of the foregoing, which has also caused, and will continue to cause, additional lost income opportunities.

JURISDICTION AND VENUE

64. Plaintiff incorporates by reference paragraphs 1-63 as if fully set forth herein.

65. This is a civil action seeking injunctive relief and damages for copyright infringement under the Copyright Act of 1976, false advertising under the Lanham Act, and unfair competition under New York law.

66. This Court has original subject matter jurisdiction over the Copyright Act Lanham Act and unfair competition claims pursuant to 28 U.S.C. §§ 1331 and 1338, and has pendent jurisdiction over the state law unfair competition claim under 28 U.S.C. § 1367.

67. This Court also has jurisdiction under 28 U.S.C. §§ 1332(a). Upon information and belief, the amount in controversy exceeds $75,000.

68. Venue is proper in this district under 28 U.S.C. § 1400(a) because, *inter alia*, Afineevsky unlawfully caused Kolodiy's copyrighted work to be publicly performed in this district, and falsely and misleadingly promoted *Winter on Fire* in this district, as set forth in greater detail above. As such, he is subject to personal jurisdiction in this Court and "may be found" in this District. Venue is further proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the false advertising and unfair competition claims herein, including Afineevsky's appearances on The Daily Show with Trevor Noah and The Brian Lehrer Show, took place in this district.

COUNT I: INFRINGEMENT OF COPYRIGHT (17 U.S.C. § 501)

69. Plaintiff incorporates by reference paragraphs 1-68 as if set forth herein.

70. *Freedom or Death!* is registered under 17 U.S.C. § 408 with the U.S. Copyright Office, registration number PA 1-969-758, effective January 19, 2016.

71. Kolodiy owns the copyright in *Freedom or Death!* and the Misappropriated Footage.

72. By the acts of copying, distributing, and publicly performing Plaintiff's work, Defendant Afineevsky has willfully infringed Kolodiy's copyright in violation of 17 U.S.C. § 501.

73. Afineevsky has been aware of his infringement since September 29, 2015 at the latest, when Kolodiy personally informed him of the same.

74. By incorporating the Misappropriated Footage into *Winter on Fire*, Afineevsky has also materially contributed to the infringing activities of Netflix and the theatres and film festivals that have screened *Winter on Fire*. Upon information and belief, Afineevsky has also induced and caused said infringing activities.

75. Upon information and belief, Afineevsky has received revenue and made a profit from the infringement.

76. Plaintiff has suffered damages from Afineevsky's infringement, including but not limited to loss of sales of, and royalties from, Plaintiff's own documentary film *Freedom or Death!*.

77. Plaintiff has suffered reputational harm as a result of Afineevsky's infringement, which has caused, and will continue to cause, the loss of additional income opportunities.

COUNT II: FALSE ADVERTISING (15 U.S.C. § 1125(a))

78. Plaintiff incorporates by reference paragraphs 1-68 as if set forth herein.

79. *Winter on Fire* is in commercial competition with *Freedom or Death!*.

80. Afineevsky made false statements of fact regarding his physical presence in Kiev during the Maidan revolution.

81. Afineevsky made false statements of fact regarding the injuries he sustained in Kiev during the Maidan revolution.

82. Afineevsky made false statements of fact regarding the relationships he developed in Kiev during the Maidan revolution.

83. Afineevsky made false statements about the nature and origination of the footage in *Winter on Fire*.

84. Afineevsky's false statements have the tendency to deceive a substantial segment of *Freedom or Death!'s* audience, which includes, but is not limited to, viewers of documentary films, critics and supporters of the revolution, anyone interested in foreign affairs, educators, the Ukrainian diaspora, and business partners interested in licensing footage regarding the Ukrainian revolution (collectively, "The Audience").

85. Afineevsky's false statements actually deceived and continue to deceive a substantial segment of The Audience.

86. The deception caused by each of Afineevsky's false statements is likely to influence and has influenced the purchasing decisions of The Audience.

87. Plaintiff has suffered damages from Afineevsky's false and misleading statements, including but not limited to loss of sales of, and royalties from, Plaintiffs' own documentary film *Freedom or Death!*.

88. Afineevsky's false and misleading promotion has been willful. Accordingly, this Court should exercise its discretion to enhance Plaintiffs' damages under 15 U.S.C. § 1117.

COUNT III: UNFAIR COMPETITION

89. Plaintiff incorporates by reference paragraphs 1-68 as if set forth herein.

90. Afineevsky is liable for unfair competition under the laws of the State of New York.

91. By commercially exploiting the Misappropriated Footage without authorization, and by falsely and misleadingly promoting *Winter on Fire*, Afineevsky has competed directly and unfairly with Plaintiffs. Afineevsky further takes advantage of and undermines Plaintiff's substantial creative and financial investment, as well as risk to personal safety, in his audiovisual works, and Plaintiff's efforts and labor. Afineevsky is willfully, wantonly and unfairly exploiting Plaintiff's property interests in his audiovisual works for Afineevsky's own commercial benefit and in bad faith.

92. As a direct and proximate result of Afineevsky's unlawful conduct, Plaintiff has suffered harm, and is entitled to compensatory damages in such amounts as will be proven at trial, as well as punitive damages.

93. Afineevsky's conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money damages. Plaintiff has no adequate remedy at law and is entitled to injunctive relief prohibiting Afineevsky from further violating Plaintiff's rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Afineevsky as follows:

1. For a preliminary and permanent injunction requiring that Afineevsky and Afineevsky's officers, agents, employees, and attorneys, and all persons acting in concert or participation with each or any of them, cease any and all uses, including streaming and viewing, of Plaintiff's Misappropriated Footage, and promotion of the Misappropriated Footage, including any actions inducing or causing others to play or use the Misappropriated Footage, as well as cease any further false or misleading promotion in connection with *Winter on Fire*.

2. For Plaintiff's actual damages, Defendant's profits, and enhancements of the same for willfulness to the maximum extent permitted under the law.

3. For Plaintiff's costs including reasonable attorneys' fees.

4. For pre- and post-judgment interest on any monetary award made part of the judgment against Afineevsky.

5. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs respectfully demand a trial by jury of all issues so triable.

Dated: Feb. 3, 2017

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